IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ramesh Joshi. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 838/2002
against the order dated 13-9-2002 passed
by the Additional Sessions Judge, Bali, district
Pali, in Criminal Revision No.42/99.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. N.M. Lodha, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 13-9-2002 passed by the Additional Sessions Judge, Bali, district Pali, (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 42/99, whereby the revision petition filed by the petitioner against the order dated 10-8-99 passed by the Additional Chief Judicial Magistrate, Bali, district Pali (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully perused the orders passed by the trial Court as well as the Revisional Court.

It is contended by the learned counsel for the petitioner that the complaint is barred by the period of limitation. It is contended that a notice, as envisaged under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) was sent on 12-4-1993 and as per the endorsement of the postal authority, on 23-4-1993, the postman went to the addressee and thereafter the notice was ultimately returned, which was received by the complainant on 7-5-1993 and, therefore, according to the learned counsel for the petitioner, the period of limitation for the purpose of cause of action is to be computed from 23-4-1993 and if fifteen days period is computed from 23-4-1993 then the period of fifteen days expired on 7.5.1993 and from 7-5-1993, within one month the complaint was to be filed by the complainant but the same was filed on 18-6-1993 and, therefore, the order framing the charge passed by the trial Court as also the impugned order affirming the order of the trial Court, are bad in the eye of law.

Learned counsel for the complainant submits that the cheque was presented in the bank on 15-3-1993. On 5-4-1993, the bank returned the cheque unpaid on the ground of "insufficient fund" to the account. Notice was sent to the

petitioner on 12-4-1993 demanding the cheque amount, which was received unserved on 7-5-1993 and, therefore, the complainant came to know about the service, may be on account of unclaimed as on that day the addressee acquired the knowledge and from that day, the period of fifteen days is to be counted for the purpose of computing the period for cause of action, which according to the learned counsel for the complainant is 23.5.1993 as fifteen days period expired on that day and the cause of action arose on 23-5-1993 when the petitioner failed to make payment of the cheque amount even after demand and the complaint was filed on 18-6-1993 within the period of limitation.

Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Sadanandan Bhadran Vs. Madhavan Sunil Kumar, 1998 Cri. L.J. 4066 (SC.), wherein the Hon'ble Apex Court held that a cheque can be presented any number of times during the period of its validity by payee. On each presentation of the cheque and its dishonour a fresh right, and not cause of action, accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his right under Clause (b) of Section 138 of the Act, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once he gives a notice under Clause (b) of Section 138 he forfeits

such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.

On careful perusal of the record, it no where appears that this point was argued either before the trial Court or the Revisional Court. Both the courts below had no occasion to consider the contention raised here for the first time in this miscellaneous petition. However, on the basis of the material placed before it, the trial Court came to the conclusion that the petitioner committed the offence under Section 138 of the Act. The Revisional Court, on reconsideration of the material, found no error in the order of the trial Court.

Even from the record, prima facie it no where appears that the notice sent to the petitioner by the complainant was refused by the petitioner on 23-4-1993 and, therefore, the contention raised by the learned counsel for the petitioner to compute the period of fifteen days and thereafter one month from 23-4-1993, cannot be accepted. However, these are the questions of fact and are yet to be established by the petitioner. It is always open for the petitioner to agitate and lead evidence

to establish that the notice was refused by him on a particular date. On careful perusal of the complaint, it has no where been stated that the notice was refused by the petitioner on 23.4.1993. What has been averred in the complaint is that an undelivered notice was received by the complainant and on that day, the complainant claims to have acquired the service of the notice, may be by refusal or unclaimed. The judgment relied on by the learned counsel for the petitioner is of no help as it turns on its own fats and cannot be applied to the facts and circumstances of the instant case.

If the period, as averred in the complaint, is taken as a prima facie evidence then prima facie the complaint is within the limitation for the reason that from 7-5-1993, when the notice was received back by the complainant, if the period of fifteen days is counted and as on the day next to fifteen days is the day of cause of action and from the cause of action, the complaint has been filed within one month.

In the instant case, the trial Court took the cognizance of the offence under Section 138 of the Act on 25.8.1999. The order taking cognizance was challenged on 13.9.2002. However, the petitioner was unsuccessful and thereafter even S.B. Criminal Misc. Petition No. 639/1993 was filed which came to be dismissed by this Court on 8-7-1994. Thereafter the trial Court framed the charge on 10-8-1999 and

against that order, a revision petition was filed which came to be dismissed by the order dated 13-9-2002, against which the petitioner has filed the instant criminal miscellaneous petition.

Keeping in view the facts and circumstances of the case and the material available on record, as noticed above, in my view, the trial Court was justified in framing the charge, as also the Revisional Court was justified in affirming the order of the trial Court framing the charge. In the circumstances, therefore, no case for interference in the inherent jurisdiction is made out. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court.

Consequently, the criminal miscellaneous petition is dismissed. The stay petition also stands dismissed. Record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

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